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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Fidelity National Financial, )  
Inc., a Delaware )  
corporation, Fidelity )  
Express Network, Inc., a )  
California corporation, )  
Plaintiffs, )  
vs. )  
Colin H. Friedman, *et al.* )  
Defendants. )

No. MC 11-00072-PHX-RCB

O R D E R

This dispute, now in its second decade, pertains to the latest attempt by plaintiffs, Fidelity National Financial, Inc. and Fidelity Express Network, Inc. ("Fidelity"), to enforce a judgment. Fidelity obtained that judgment which, with interest, now totals over \$10 million dollars, against defendants Colin H. Friedman, Hedy Kramer Friedman, Farid

1 Meshkatai, and Anita Kramer Meshkatai<sup>1</sup> following a trial in  
2 the United States District Court for the Central District of  
3 California (the "California judgment"). California, as the  
4 rendering court, entered that judgment on July 12, 2002. As  
5 28 U.S.C. § 1963 allows, Fidelity registered its California  
6 judgment in this Arizona district court. The Certification  
7 of Judgment issued by the California court, along with an  
8 order of that court allowing Fidelity to register its  
9 judgment in this district court, although the action was on  
10 appeal, was entered here on November 18, 2002 (the "First  
11 Arizona Registered Judgment"). In accordance with A.R.S.  
12 § 12-1551(B), that judgment would "become[] unenforceable  
13 after five years from the date of entry unless action [wa]s  
14 taken to renew it." Fidelity National Financial, Inc. v.  
15 Friedman, 855 F.Supp.2d 948, 963 (D.Ariz. 2012) ("Fidelity  
16 V") (quoting In re Smith, 209 Ariz. 343, 101 P.3d 637) (other  
17 citation omitted). Put differently, absent renewal, the  
18 Arizona registered judgment would have expired on November  
19 18, 2007.

20 Fidelity attempted renewal on April 5, 2007, by filing  
21 what this court has previously referred to as "the 2007  
22 Certification[.]" Fidelity V, 855 F.Supp.2d at 954.  
23 Eventually, this court vacated that 2007 Certification,  
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25 <sup>1</sup> More specifically, that judgment was rendered against "Colin H.  
26 Friedman, individually and as trustee of the Friedman Family Trust UDT,  
27 ..., Hedy Kramer Friedman, individually and as trustee of the Friedman  
28 Family Trust UDT, . . . , Farid Meshkatai, and Anita Kramer Meshkatai,  
individually and as trustee of the Anita Kramer Living Trust . . . , and  
each of them, jointly and severally[.]" Certification (Doc. 1) at 2-3.

1 holding that although Fidelity permissibly re-registered the  
2 First Arizona Registered Judgment pursuant to 28 U.S.C.  
3 § 1963, that re-registration was not timely under Arizona  
4 law. See id. at 968-979.

5 In the interim, on May 26, 2011, Fidelity filed a  
6 certification of the California Judgment in the United States  
7 District Court for the Western District of Washington (the  
8 "Washington Registered Judgment"<sup>2</sup>). Fidelity Nat. Financial,  
9 Inc. v. Friedman, No. 2:11-mc-0072 (W.D.Wash.). Several  
10 months later, on July 7, 2011, Fidelity filed the Washington  
11 Registered Judgment in this court (the "Second Arizona  
12 Registered Judgment"<sup>3</sup>). Currently pending before the court is  
13 defendants' "motion . . . for relief from judgment pursuant to  
14 Rule 60(B) [sic] of the Federal Rules of Civil Procedure;  
15 and/or to vacate the certification of judgment for  
16 registration in another district[,] " Mot. 9 at 1:14-17  
17 (emphasis omitted), "and relieve the[m] . . . from any  
18 judgment created as a result of that filing." Id. at 9:21-  
19 23.<sup>4</sup>

### 20 Background

21 The long and somewhat convoluted history of Fidelity's  
22 attempts to enforce the California judgment have been  
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24 <sup>2</sup> This designation is for convenience only and it shall not be  
25 accorded any legal significance.

26 <sup>3</sup> Again, this designation is for convenience only and it shall not  
be accorded any legal significance.

27 <sup>4</sup> For ease of reference, all citations to page numbers of docketed  
28 items are to the page assigned by the court's case management and  
electronic case filing (CM/ECF) system.

1 chronicled in prior decisions of this court and others,  
2 familiarity with which is presumed. More recently, as just  
3 mentioned, on May 26, 2011, in the Western District of  
4 Washington, Fidelity filed a "Certification of Judgment For  
5 Registration In Another District[.]" Fidelity, No. 2:11-mc-  
6 0072 (W.D.Wash.) (Doc. 1) That Certification, dated March 7,  
7 2011, was issued by the Clerk of the California court, and  
8 indicated that a certified copy of the California judgment was  
9 attached thereto. Id. The defendants were not served with  
10 the Washington Registration until nearly nine months later -  
11 on December 1, 2011. See Jike Decl'n (Doc. 16-1) at 2, ¶ 4,  
12 and exh. A thereto (Doc. 16-2) at 2-3.

13       Thereafter, on July 7, 2011, in this Arizona district  
14 court, Fidelity filed the exact same Certification of  
15 Judgment, attaching the California judgment, which it had  
16 previously filed in the Washington Court. That particular  
17 certification was certified by the Clerk of the Court for the  
18 Western District of Washington, however. Certification (Doc.  
19 1) at 1. Again, there was a delay in service upon the  
20 defendants. They were not served with the Second Arizona  
21 Registered Judgment until nearly five months later, on  
22 December 1, 2011. See Jike Decl'n (Doc. 16-1) at 2, ¶ 4, and  
23 exh. A thereto (Doc. 16-2) at 2-3. Fidelity has not executed  
24 upon either the Washington Registered Judgment or the Second  
25 Arizona Registered Judgment as against defendants' property,  
26 id. at ¶¶ 2 and 3; and, it is not attempting to do so at this  
27 juncture.

28       In the meantime, Fidelity timely renewed the California

1 judgment in that rendering court,<sup>5</sup> extending the period of  
 2 enforceability for ten years. See Cal. Code Civ. Proc.  
 3 § 683.120(b). Consequently, Fidelity's California judgment  
 4 still is enforceable there. In reliance upon the renewed  
 5 California judgment, the Washington court granted Fidelity's  
 6 *ex parte* application to extend the Washington Registered  
 7 Judgment. See Fidelity, No. 11-mc-00072 (W.D.Wash.), Ord.  
 8 (Doc. 3). It thus appears that Fidelity has "an additional  
 9 ten years during which an execution, garnishment, or other  
 10 legal process may be issued[]" as to the Washington Registered  
 11 Judgment, RCW 6.17.020(3), whereas the First Arizona  
 12 Registered Judgment is no longer enforceable here.

### 13 **Summary of Arguments**<sup>6</sup>

14 The primary thrust of defendants' motion is that the  
 15 court should vacate the Second Arizona Registered Judgment  
 16 because the "Washington [Registered] Judgment . . . is not a  
 17 'new' Judgment capable of re-registration" in this court.  
 18 Mot. (Doc. 9) at 8:13-14. Relatedly, defendants argue that  
 19 the Washington Registered Judgment "is void for lack of due  
 20 process and personal jurisdiction over" them, and hence it  
 21 cannot be registered here. Id. at 4:1-2, ¶ 12.

22 Relying solely upon Del Prado v. B.N. Dev. Co., 602 F.3d  
 23 660 (5<sup>th</sup> Cir. 2010) ("Del Prado II"), and pursuant to 28 U.S.C.

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25 <sup>5</sup> Fidelity, No. 11-mc-00072 (W.D.Wash.), "Ex Parte Order Extending  
 26 Judgment" (Doc. 3) at 2.

27 <sup>6</sup> Given the court's intimate familiarity with this action and because the  
 28 issues have been fully briefed, in its discretion the court denies the parties'  
 request for oral argument as it would not aid the decisional process. See  
 Fed.R.Civ.P. 78(b); Partridge v. Reich, 141 F.3d 920, 926 (9<sup>th</sup> Cir. 1998).

1 § 1963, Fidelity counters that it properly successively  
2 registered the Washington Registered Judgment in this court.  
3 Moreover, Fidelity asserts that "any perceived deficiency" in  
4 the Washington Registered Judgment should be resolved by that  
5 court. Resp. (Doc. 16) at 2:21.

## 6 Discussion

### 7 I. Requests for Judicial Notice

8 Before addressing these substantive arguments, the court  
9 must consider the parties' separate Requests for Judicial  
10 Notice ("RJN") made pursuant to Fed.R.Evid. 201. Although  
11 the parties cite to subsection (d) of that Rule, clearly that  
12 was not their intent. Rule 201(d) governs the timing of when  
13 a court may take judicial notice, not the substantive basis  
14 for such a request. From the content of their respective  
15 requests, clearly the parties intended to rely upon Rule  
16 201(b)(2). That Rule allows a court to take judicial notice  
17 of "a fact that is not subject to reasonable dispute because  
18 it . . . can be accurately and readily determined from sources  
19 whose accuracy cannot be reasonably question." Fed. R. Evid.  
20 201(b)(2).

21 Here, the sources of the parties' RJNs are all court  
22 filings in this or several closely related actions. Because  
23 these filings are all matters of public record, they are  
24 properly the subject of judicial notice. See, e.g., Terenkian  
25 v. Republic of Iraq, 694 F.3d 1122, 1137 n. 8 (9<sup>th</sup> Cir. 2012)  
26 (citation omitted) (granting RJNs "of certain pleadings and  
27 court filings in the New York litigation submitted" by the  
28 parties); Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d

741, 746 n. 6 (9<sup>th</sup> Cir. 2006) ("court filings and other matters of public record" were "readily verifiable and, therefore, the proper subject of judicial notice[]"); Kourtis v. Cameron, 419 F.3d 989, 994 n. 2 (9<sup>th</sup> Cir. 2005) (citation omitted) ("court records from related proceedings can be taken into account without converting a motion to dismiss into a summary judgment motion[ ]"), *overruled on other grounds*, Taylor v. Sturgell, 553 U.S. 880, 128 S.Ct. 2161, 171 L.Ed.2d 155 (2008). Therefore, the court grants the parties' respective RJNs (Docs. 14 and 17).

## **II. Second Arizona Registration**

First, the defendants broadly contend that the court must vacate the Second Arizona Registered Judgment because "Arizona law does not allow for re-registration of the same judgment." Mot. (Doc. 9) at 12:8-9; at 14:17-18 (emphases omitted). Arizona law does not apply, Fidelity counters, because the issue is not one of execution upon a judgment. Rather, from Fidelity's perspective, the issue pertains to registration under federal law, and 28 U.S.C. § 1963 in particular. Thus, Fidelity argues that the Second Arizona Registration is governed strictly by federal law.

### **A. Governing Law**

The court agrees with the defendants that Rule 69(a) "provid[es] that the procedure on execution is to be in accordance with the procedure of the state in which the district court is located at the time the remedy is sought." See Hilao v. Estate of Marcos, 536 F.3d 980, 987 (9<sup>th</sup> Cir. 2008). The court cannot agree, however, with defendants'

1 extrapolation from that Rule -- that "Arizona law governs all  
2 *proceedings* with respect to the [Second] Arizona" Registered  
3 Judgment. Mot. (Doc. 9) at 12:15-16 (emphasis added).

4       There is nothing in the plain language of Rule 69 to  
5 support such an expansive reading of that Rule. In fact, Rule  
6 69(a)(1) carefully limits its application to execution of  
7 judgments, stating in pertinent part:

8                   The procedure on execution--and in  
9                   proceedings supplementary to and in  
10                   aid of judgment or execution--must  
11                   accord with the procedure of the  
12                   state where the court is located[.]

13 Fed.R.Civ.P. 69(a)(1). The issues herein do not pertain to  
14 such proceedings.

15       Moreover, Rule 69(a)(1) is equally clear that "a federal  
16 statute governs to the extent it applies." Id. In the  
17 present case, the primary issue is whether the Washington  
18 Registered Judgment "create[d] a wholly new judgment that can,  
19 in turn, be re-registered to create a wholly new judgment" in  
20 this jurisdiction, despite the expiration of the First Arizona  
21 Registered Judgment and its untimely re-registration. See De  
22 Leon v. Marcos, 742 F.Supp.2d 1168, 1172 (D.Colo. 2010) ("De  
23 Leon I"), vacated and remanded on other grounds, 659 F.3d 1276  
24 (10<sup>th</sup> Cir. 2011) ("De Leon II"). Resolution of that issue  
25 implicates section 1963 - the federal registration of  
26 judgments statute. Thus, there is no merit to the defense  
27 argument that based upon Rule 69(a), Arizona law governs "all  
28 proceedings" as to the Second Arizona Registered Judgment.  
See Mot. (Doc. 9) at 12:16.

      In addition, the court fails to see defendants' perceived



1 inconsistency between section 1963's provision that "[t]he  
2 procedure prescribed under this section is in addition to the  
3 other procedures provided by law for the *enforcement* of  
4 judgments[,] " and Fidelity's argument that only federal law  
5 applies here. See 28 U.S.C. § 1963 (emphasis added). The  
6 defendants are overlooking section 1963's unequivocal  
7 "enforcement" language, just quoted, which is not an issue at  
8 this juncture.

9 Likewise, there is no merit to defendants' contention  
10 that this Court *must* apply Arizona law in reviewing the issues  
11 on this Motion[,] " because purportedly "the Ninth Circuit has  
12 unequivocally recognized the applicability of state law in  
13 dealing with the *registration*, renewal and enforcement of  
14 judgment in the district in which the judgment is sought to be  
15 enforced." Reply (Doc. 20) at 7:18; and 7:3-5 (emphasis  
16 added). Significantly, in not one of the cases to which the  
17 defendants cite or mention did the court apply state law in  
18 "dealing with registration[.]"<sup>7</sup> See id. at 7:4. Those courts  
19 dealt, instead, with the application of state law in the  
20 context of execution, and "proceedings supplementary to and in  
21 aid of judgment or execution[,] " Fed.R.Civ.P. 69(a)(1), such  
22 as enforcement of judgments. See Fidelity Nat. Financial Inc.  
23 v. Friedman, 602 F.3d 1121, 1122 (9<sup>th</sup> Cir. 2010) (emphasis  
24 added) (certifying to the Arizona Supreme Court two issues  
25 regarding whether Fidelity's actions "were sufficient under  
26

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27 <sup>7</sup> Nor has the court's independent research unearthed any Ninth  
28 Circuit case law applying state law when dealing with federally registered  
judgments.

1 Arizona law to *renew* the prior registration of a judgment");  
 2 Hilao, 536 F.3d at 987-988 (emphasis added) (Rule 69(a)  
 3 "provid[es] that the *procedure on execution* is to be in  
 4 accordance with the procedure of the state in which the  
 5 district court is located at the time the remedy is sought.");  
 6 Gagan v. Sharar, 376 F.3d 987, 988 (9<sup>th</sup> Cir. 2004) (emphasis  
 7 added) ("This case concerns *execution* in a community property  
 8 state of a judgment obtained in a common law state."); and  
 9 Mantanuska Valley Lines, Inc. v. Molitor, 365 F.2d 358, 359-60  
 10 (9<sup>th</sup> Cir. 1966)(citation omitted) (emphasis added) ("[T]he  
 11 *enforcement of a judgment* of a sister state may be barred by  
 12 application of the statute of limitations of the forum  
 13 state.") Thus, especially with no case authority to support  
 14 the defendants' contrary argument, the court is not convinced  
 15 that Arizona rather than federal law applies to the  
 16 registration issues herein.

### 17 **B. Federal Law**

18 Section 1963 states, in relevant part:

19 A judgment in an action for the recovery of  
 20 money or property entered in any . . . district  
 21 court, . . . may be registered by filing a  
 22 certified copy of the judgment in any other  
 23 district[, ] when the judgment has become final  
 24 by appeal or by expiration of the time for  
 25 appeal[.]. . . A judgment so registered shall  
 26 have the same effect as a judgment of the district  
 27 court of the district where registered and  
 28 may be enforced in like manner. . . .

25 28 U.S.C. § 1963. Here, the issue is whether a judgment

1 registered in a federal court pursuant to that statute<sup>8</sup>  
2 creates a new judgment that can, in turn, be "re-registered"  
3 in a second federal court, although that "re-registered"  
4 judgment previously had been registered in that second court,  
5 where it had expired and was not timely re-registered. This  
6 novel issue appears to be one of first impression.

7 With conflicting results, three other courts have  
8 addressed the narrower issue of whether "registration of a  
9 judgment pursuant to 28 U.S.C. § 1963 create[s] a wholly new  
10 judgment that can, in turn, be re-registered to create wholly  
11 new judgments in other jurisdictions[.]" See De Leon I, 742  
12 F.Supp.2d at 1172 (noting that this issue "is the same one  
13 faced by the Northern District of Texas [in Del Prado v. B.N.  
14 Dev. Co., 4:05-CV-234-Y (N.D. Tex. Jan. 9, 2009) ("Del Prado  
15 I") and the 5<sup>th</sup> Circuit [in Del Prado II]"). The district  
16 courts in De Leon I and Del Prado I, answered in the negative,  
17 but the Fifth Circuit answered in the affirmative in Del Prado  
18 II.

19 The Fifth Circuit's Del Prado II decision is the sole  
20 basis for Fidelity's argument that section 1963 permits what  
21 that Court has termed "'successive registration.'" See Del  
22 Prado II, 602 F.3d at 662. Strenuously opposing application  
23 of Del Prado II, the defendants argue that Fidelity's reliance  
24 thereon is "misplaced[]" because that case is distinguishable.

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26 <sup>8</sup> There is nothing on the face of either the May 26, 2011,  
27 Certification of Judgment filed in Washington, or on the Certification of  
28 Judgment filed in this court on July 7, 2011, indicating the bases for  
those filings. The court adopts the parties' operating assumption that 28  
U.S.C. § 1963 was the statutory basis for both.

1 Mot. (Doc. 9) at 14:22. Thus, regardless of whether this  
2 court finds the Del Prado II reasoning "persuasive," the  
3 defendants contend it simply has no applicability here. See  
4 id. at 16:27. Additionally, the defendants point to De Leon  
5 I, where the district court found, *inter alia*, that Del Prado  
6 II "incorrectly applied prior precedent[.]" De Leon I, 742  
7 F.Supp.2d at 1176. Moreover, from defendants' viewpoint, the  
8 court's rationale in De Leon I is consistent with Arizona  
9 law, which requires strict compliance with renewal of judgment  
10 statutes.

11 With equal vigor, Fidelity argues that Del Prado II is  
12 sufficiently analogous to the present case such that its  
13 reasoning should apply here. Fidelity thus maintains, based  
14 upon the Fifth Circuit's Del Prado II decision and section  
15 1963, that it permissibly "successively" re-registered its  
16 Washington Registered Judgment in this Arizona district court.

17 The parties' divergent views of Del Prado II, especially  
18 when coupled with the conflict between Del Prado II and De  
19 Leon I, warrant a close examination of each. The court will  
20 also look to the district court's decision in Del Prado I.  
21 Ordinarily, this court would not consider such a case because  
22 of its reversal on appeal. Given the paucity of relevant case  
23 law, however, and because the Del Prado I's reasoning aligns  
24 with what this court finds to be the thorough and thoughtful  
25 analysis in De Leon I, Del Prado I also is noteworthy.

26 The genesis for both Del Prado and De Leon was a class  
27 action commenced in the District of Hawaii, claiming human  
28 rights violations by now deceased Ferdinand Marcos, the former

1 president of the Philippines. Following a trial, in 1995, the  
2 Hawaii District Court entered a nearly \$2 billion judgment in  
3 favor of the class. Pursuant to 28 U.S.C. § 1963, in early  
4 1997, the class registered the Hawaiian judgment in the  
5 Northern District of Illinois. In the meantime, because the  
6 class did not timely extend the judgment rendered in Hawaii,  
7 by operation of Hawaiian law, that judgment was extinguished  
8 on February 2005. Hilao, 536 F.3d 980.

9 In April 2005, evidently following the transfer of the  
10 Hawaii judgment to the Northern District of Texas, the class  
11 commenced the Del Prado action. It sought a declaration that  
12 certain real property located in Texas was beneficially owned  
13 by the Marcos estate. The class also sought to execute and  
14 foreclose upon that property in partial satisfaction of the  
15 judgment rendered in Hawaii. During the pendency of that  
16 Texas enforcement proceeding, the Illinois registered  
17 judgment became dormant. See 735 ILL. Comp. Stat. 5/12-  
18 108(a). Because of that, and having no enforceable judgment  
19 in Hawaii, pursuant to Illinois law, the class filed a  
20 petition for revival of the Illinois registered judgment. The  
21 petition was granted and on September 4, 2008, the Clerk of  
22 the Court for the Northern District of Illinois entered the  
23 revived judgment pursuant to Fed.R.Civ.P. 58.

24 Shortly thereafter, on October 7, 2008, pursuant to 28  
25 U.S.C. § 1963, the class registered the revived Illinois  
26 judgment in the District of Colorado. Likewise, the next day,  
27 in the Del Prado action, the class registered the revived  
28 Illinois judgment in Texas. On September 16, 2009, the class

1 commenced an action in Colorado seeking partial satisfaction  
2 of the Hawaii judgment against Colorado real property which  
3 allegedly had been beneficially owned by the Marcos estate  
4 ("the De Leon action").

5 **1. Del Prado I**

6 The district court in Del Prado I rejected plaintiffs'  
7 argument that although the statute of limitations had run in  
8 Hawaii, the rendering court, the Illinois registered judgment  
9 created a new, independent judgment that could be re-  
10 registered in the Texas district court pursuant to 28 U.S.C.  
11 § 1963. In rejecting that argument, the court looked first to  
12 the "plain language" of that statute. Del Prado I, Doc. 237  
13 at 7. More specifically, the Del Prado I court found section  
14 1963, which on its face "allows for the registration of a  
15 'judgment in an action for the recovery of money or property  
16 entered' in any district court, after 'such judgment has  
17 become final by appeal or expiration of the time for  
18 appeal[,]' " . . . demonstrates that it is the *initial*  
19 *judgment on the merits* from the rendering court - i.e., the  
20 'judgment in an action for the recovery of money or property'  
21 - *that may be registered.*" Id. at 7 (quoting 28 U.S.C.  
22 § 1963) (emphasis added) (citations omitted).

23 Shifting from the text of section 1963, the Del Prado I  
24 court also discussed the "scant . . . interpretative case law  
25 surrounding" that statute. See Euro-American Coal Trading,  
26 Inc. v. James Taylor Mining, Inc., 431 F.Supp.2d 705, 707 n. 7  
27 (E.D.Ky. 2006). Factoring prominently in that discussion was  
28 Stanford v. Utley, 341 F.2d 265 (8<sup>th</sup> Cir. 1965) (Blackmun, J.),

1 the seminal case construing section 1963, as well as Home Port  
2 Rentals, Inc. v. Int'l Yachting Group, Inc., 252 F.3d 399 (5<sup>th</sup>  
3 Cir. 2001), and the Ninth Circuit's Hilao decision. After  
4 examining those cases, the Del Prado I court recognized that  
5 "[u]ltimately, § 1963 may in fact allow registration of the  
6 rendering court's judgment in more than one district." Del  
7 Prado I, Doc. 237 at 11 (emphasis added)(citing Board of  
8 Trustees v. Elite Erectors, Inc., 212 F.3d 1031, 1034 (9<sup>th</sup> Cir.  
9 2000)). At the same time, however, as the Del Prado I court  
10 was quick to point out, "the *Stanford*, *Home Port Rentals*, and  
11 other courts to have addressed the issue acknowledge '[t]hat  
12 the registered judgment might not be congruent with a new  
13 judgment of the registration court for every purpose other  
14 than enforcement.'" Id. (citation omitted). Buttressed by the  
15 Ninth Circuit's decision in Hilao, the district court  
16 concluded Del Prado I was "such a case." Id.

17 Hilao and Del Prado I did raise different issues. The  
18 issue in Hilao was "whether registration extended the statute  
19 of limitations that was applicable in the rendering court[,]"  
20 whereas the issue in Del Prado I was "whether a registered  
21 judgment may itself be registered despite the running of the  
22 statute of limitations in the rendering court[.]" Id.  
23 Nonetheless, the Del Prado I court found that those issues  
24 raised the "same . . . concern[.]" Id. In particular, either  
25 way, adopting plaintiffs' position would mean "'that a federal  
26 judgment is free of state limitations and can be enforced  
27 forever.'" Id. at 11-12 (quoting Hilao, 536 F.3d at 987).  
28 "Absent clear language in . . . section [1963] or binding

precedent requiring it to do so[,]” the district court in Del Prado I declined to give “such an unbounded effect[]” to that statute. Id. at 12.

## **2. Del Prado II**

Reversing Del Prado I, and approving of “successive registration,” the Fifth Circuit held: “Because the Illinois registered judgment was equivalent to a new federal judgment with the same status as a judgment on a judgment, it was also capable of being successively registered and enforced under § 1963 in the Northern District of Texas.” Del Prado II, 602 F.3d at 661 and 669. The Fifth Circuit, like the district court, looked to the text of section 1963. But, unlike the district court, the Fifth Circuit selectively read in isolation only a small part of section 1963. Not surprisingly then, the Fifth Circuit’s statutory interpretation differed from the district court’s. More specifically, the Fifth Circuit read part of “[t]he final sentence of § 1963<sup>9</sup> [as] “clearly stat[ing] that “a registered judgment has ‘the same effect as a judgment of the district court of the district where registered and may be enforced in like manner[,]’ . . . to mean that once the Hawaiian judgment was registered in Illinois in 1997, [it] had the same effect as any judgment rendered in the Northern District of Illinois and could be enforced as a judgment rendered in the Northern District of Illinois.” Id. at 665 (footnote omitted and footnote added).

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<sup>9</sup> More accurately, the Court was reading the final sentence of the first paragraph of section 1963, as opposed to the final sentence of that whole statute.



1 The Fifth Circuit, likewise, interpreted cases such as  
2 Stanford, its own earlier Home Port Rentals decision, and  
3 Hilao, differently than did the district court. The Fifth  
4 Circuit found that those cases, like section 1963, "support  
5 the principal [sic] that a registered judgment has the same  
6 effect as a rendered judgment." Id. at 666. Lastly,  
7 "reinforce[d]" by Full Faith and Credit concepts, the Del  
8 Prado II Court rejected defendants' argument that the Illinois  
9 registered judgment should be "treated differently than [a]  
10 judgment on a judgment[.]" Id. at 668. The Court rejected  
11 that argument, *inter alia*, because defendants did not show  
12 lack of notice or that they were impeded from raising any  
13 defense when the Illinois registered judgment was successfully  
14 registered in Texas.

15 Putting aside for the moment the Fifth Circuit's  
16 rationale, the court agrees with the defendants that given the  
17 distinctions outlined below between Del Prado II and the  
18 present case, Del Prado II does not control here. The first  
19 and most critical distinction is that unlike Fidelity, before  
20 it attempted to register the Illinois judgment in Texas, the  
21 judgment creditor in Del Prado II had not validly registered  
22 the original Hawaii judgment in Texas, and allowed it to  
23 expire there. Consequently, the Fifth Circuit had no reason  
24 to address the specific issue confronting this court: whether  
25 the Washington Registered Judgment created a new judgment that  
26 can, in turn, be successively re-registered even though the  
27 First Arizona Registered Judgment expired and it was not  
28 timely re-registered here. In fact, "[n]o case cited by *Del*

1 *Prado [II]* involves," as here, "a foreign judgment, registered  
2 in one state, and an attempted registration in yet a third  
3 state." See De Leon I, 742 F.Supp.2d at 1175 n. 6.

4 Del Prado II is distinguishable on another basis. There,  
5 the defendants argued that the revived Illinois registered  
6 judgment did not "qualify as an independent judgment because  
7 it was not 'entered'" in the Illinois district court in  
8 accordance with Fed.R.Civ.P. 58. Del Prado II, 602 F.3d at  
9 665. Finding "no merit" to that argument, the Fifth Circuit  
10 pointed out that "the revived Illinois registered judgment was  
11 entered by the Clerk of the Court in the Northern District of  
12 Illinois as a separate document entitled 'Judgment in a Civil  
13 Case.'" Id.

14 Fidelity cannot avail itself of that logic, however,  
15 because the Western District of Washington Court did not  
16 separately enter any such document. Rather, as the docket  
17 sheet reflects, the predicate filing in that court was the  
18 "Certification of Judgment for Registration in Another  
19 District[]" issued by the rendering California court. See  
20 Defs.' RJN (Doc. 14), exh. G thereto (Doc. 14-7) at 3. Nor,  
21 as more fully explained herein, did Del Prado II raise the  
22 specter, as does this action, that successive registration  
23 would conflict with state law. These differences demonstrate,  
24 once again, "that Fidelity's reliance upon *Del Prado [II]* is  
25 misplaced." See Fidelity V, 855 F.Supp.2d at 970 (internal  
26 quotation marks and citation omitted).

### 27 3. De Leon I

28 Even overlooking those distinctions (which it is not),

1 the court flatly rejects Fidelity's argument that Del Prado  
2 II's "reasoning . . . applies here." Resp. (Doc. 16) at 5:19.  
3 The court rejects that argument because it, too, "respectfully  
4 disagrees with the [Fifth] Circuit's reasoning[]" in Del Prado  
5 II. De Leon I, 742 F.Supp.2d at 1172. Fidelity suggests that  
6 this court should disregard De Leon I because "it has been  
7 reversed[,]" and the Tenth Circuit found that decision to be  
8 "void." Resp. (Doc. 16) at 6:26-27, n. 3 (citation omitted).  
9 Actually, because the Tenth Circuit did not reach the merits,  
10 it did not reverse the district court. Rather, it vacated and  
11 remanded.

12       Regardless, this court is acutely aware that the Tenth  
13 Circuit found De Leon I to be "void" because it was issued  
14 after the parties' filing of a stipulation of dismissal, "and  
15 therefore in the absence of jurisdiction." De Leon II, 659  
16 F.3d at 1284 (citation omitted). Despite the foregoing, and as  
17 previously noted, this court concurs with De Leon I's rigorous  
18 and sound analysis, wherein it found that the judgment  
19 creditor could not re-register the Illinois revived judgment  
20 in Colorado so as to support that enforcement action.

21       Several aspects of De Leon I heavily inform this court's  
22 conclusion that, likewise, the Washington Registered Judgment  
23 cannot be successively re-registered in this Arizona district  
24 court. Briefly, they are: (1) the nature of a judgment which  
25 can be registered pursuant to 28 U.S.C. § 1963; (2) the  
26 attributes of a judgment registered under that statute; and  
27 (3) the reasons why registered and domestic judgments are not  
28 equivalent for all purposes. The court will discuss these

1 seriatim.

2       The first persuasive aspect of De Leon I is its  
3 conclusion "that *only* an original judgment, issued by a court  
4 upon the substantive merits of an adversarial dispute, can be  
5 registered pursuant to 28 U.S.C. § 1963[.]" De Leon I, 742  
6 F.Supp.2d at 1172. The starting point for that conclusion was  
7 "the fundamental legal axiom that a judgment is 'the final  
8 determination of an action,' that embodies a court's  
9 adjudication of 'a claim pressed and resisted (or the  
10 opportunity for resistance) by adversaries'[" Id. (10  
11 Wright, Miller & Kane, *Federal Practice and Procedure*, Civil  
12 3d Ed., § 2651, quoting In the Matter of Fidelity Tube, 167  
13 F.Supp. 402, 404 (D.N.J. 1958)) (other citation omitted).

14       Scrutinizing the text of 1963, the court in De Leon I  
15 explained, the language "authoriz[ing] registration of a  
16 'judgment in an action for the recovery of money or property  
17 entered in any court of appeals, district court, bankruptcy  
18 court, or in the Court of International Trade[]' . . .  
19 anticipates two requirements." Id. at 1173. The first is  
20 "that a judgment has been *entered* by a court (as compared to a  
21 'judgment' that comes into effect by being registered)[.]"  
22 Id. (emphasis in original). The second requirement is that  
23 such a judgment "be entered in an action for the *recovery o[f]*  
24 *money or property* (in essence, reflecting the adjudication of  
25 a claim for tangible, not simply declaratory, relief)." Id.  
26 (emphasis in original). That construction of section 1963, as  
27 the De Leon I court persuasively reasoned, "is consistent with  
28 the fundamental nature of a judgment -- a document reflecting

1 the determination of a claim on its merits." Id.

2 In juxtaposition, a registered judgment "is simply the  
3 perfection of an existing judgment in another jurisdiction so  
4 as to permit foreign enforcement." Id. This court agrees  
5 that "[i]nterpreted in this way, [section 1963] would appear  
6 to provide that *only* an original judgment resolving an  
7 adversarial proceeding for tangible relief can be registered  
8 in another jurisdiction." Id. (emphasis added).

9 The district court in Del Prado I did not so closely parse  
10 section 1963; but, as mentioned earlier, it similarly construed  
11 the plain text of that statute, finding that only the original  
12 judgment of the rendering court, "in an action for the recovery  
13 of money or property[,]" may be registered. Del Prado I, Doc.  
14 237 at 7 (internal quotation marks and citations omitted). The  
15 court in Del Prado I bolstered that reading of section 1963 by  
16 astutely observing that "it could not seriously be contended  
17 that when a clerk enters the judgment of another district court  
18 on the docket of his own court he has created a final judgment  
19 that may be appealed pursuant to 28 U.S.C. § 1291." Id. at 8  
20 (citing, *inter alia*, 28 U.S.C. § 1963) (allowing registration  
21 only after the rendering court's judgment is final).

22 Based upon the straightforward and unequivocal language of  
23 28 U.S.C. § 1963, this court agrees with the De Leon I and Del  
24 Prado I courts: that statute permits registration in another  
25 district only of judgments which have been entered by the  
26 rendering court, and which were entered following the  
27 "adjudication of a claim for tangible . . . relief[.]" See De  
28 Leon I, 742 F.Supp.2d at 1173. The Washington Registered

1 Judgment fits neither requirement. There was no entry of a  
2 judgment in the Western District of Washington, as previously  
3 explained.

4 Additionally, the Washington Registered Judgment is not  
5 "an original judgment, issued by a court upon the substantive  
6 merits of an adversarial dispute[.]" See id. at 1172. Rather,  
7 the original judgment was issued and entered in the California  
8 Court following a jury trial. Consequently, the Washington  
9 Registered Judgment is "simply the perfection of [the] existing  
10 [California] judgment in another jurisdiction so as to permit  
11 foreign enforcement." See id. Thus, regardless of defendants'  
12 due process and personal jurisdiction concerns, the Washington  
13 Registered Judgment cannot be re-registered in this court  
14 because it is not a judgment capable of registration within the  
15 meaning of section 1963.

16 The De Leon I court's analysis of the "attributes" of a  
17 registered judgment is just as compelling as its textual  
18 argument, and further convinces this court that the Washington  
19 Registered Judgment cannot be successively re-registered in  
20 this court. See id. The Fifth Circuit in Del Prado II held  
21 that the registration of a judgment under section 1963 creates  
22 a new judgment that has "all of the attributes of a judgment  
23 rendered by [the jurisdiction of registration]," that, in turn  
24 "may be re-registered" in other jurisdictions. Del Prado II,  
25 602 F.3d at 667 (emphasis added). Disagreeing, the court in De  
26 Leon I recognized that "although one might equate a registered  
27 judgment with a domestic judgment for purposes of enforcement  
28 in the state of registration, there is no particular reason to

1 conclude that a registered judgment has all of the collateral  
2 features of a domestic judgment, such the ability to be  
3 (re-)registered in yet another jurisdiction." De Leon I, 742  
4 F.Supp.2d at 1175.

5 The court arrived at that conclusion after dissecting  
6 Stanford, "[t]he seminal case grappling with the issue" of  
7 "what attributes [a] registered judgment has[,]" and also  
8 looking to the Fifth Circuit's "own prior reasoning" in Home  
9 Port Rentals. Id. at 1173 and 1175. In Stanford, the Court  
10 held that if a judgment is properly registered in one state  
11 pursuant to 28 U.S.C. § 1963, it may be enforced within the  
12 limitations period of that registration state, despite the  
13 running of the time for enforcement in the rendering state.  
14 Explicitly "not[ing] by way of caveat that § 1963 presents much  
15 to be answered in the future[,]" then Judge Blackmun  
16 "emphasize[d] that [its] conclusion . . . is one having  
17 *application to the fact situation in this case.*" Stanford, 341  
18 F.2d at 271 (emphasis added). Indeed, the Stanford Court  
19 deliberately left unanswered a "string of hypothetical  
20 questions[,]" De Leon I, 742 F.Supp.2d at 1174, the most  
21 significant of which, for present purposes, is whether "a  
22 registered judgment itself [is] subject to registration  
23 elsewhere?" Stanford, 341 F.2d at 271. In carefully limiting  
24 its holding, the Stanford Court circumspectly stated that it  
25 was "not . . . go[ing] so far as to say that registration  
26 effects a new judgment in the registration court for every  
27 conceivable purpose; nor do we say that it fails to do so for  
28 any particular purpose." Id.

1 Despite that careful limitation, as the De Leon I court  
2 astutely pointed out, the Fifth Circuit in Del Prado II,  
3 "cited *Stanford* and other cases . . . , for a broader  
4 proposition that 'a registered judgment is equivalent to a new  
5 federal judgment.'" De Leon I, 742 F.Supp.2d at 1174 (quoting  
6 Del Prado II, 602 F.3d at 666, citing Stanford, 341 F.2d at  
7 269-270). In particular, the Fifth Circuit "fail[ed] to  
8 acknowledge that prior precedent equates registered and  
9 domestic judgments *only* for purposes of enforcement in the  
10 state of registration." Id. at 1175 (emphasis added). As the  
11 court in De Leon I cogently explained:

12 Cases such as *Stanford* and *Home Port Rentals*  
13 make clear that, although one might equate a  
14 registered judgment with a domestic judgment  
15 for purposes of enforcement in the state of  
16 registration, there is no particular reason  
to conclude that a registered judgment has  
all of the collateral features of a domestic  
judgment, such [as] the ability to be (re-)  
registered in yet another jurisdiction.

17 Id. In light of the foregoing, and the other persuasive  
18 reasons more fully set forth in De Leon I, this court agrees  
19 with its assessment that Del Prado II "incorrectly applied  
20 prior precedent." See id. at 1176. Thus, borrowing the De  
21 Leon I rationale, this court finds that the Washington  
22 Registered Judgment does not have "all of the collateral  
23 features of a domestic judgment, such [as] the ability to be  
24 (re-) registered in yet another jurisdiction[,]" such as this  
25 Arizona District Court. See id. at 1175.

26 Not satisfied with simply explaining its perceived flaws  
27 in the Del Prado II analysis, the court in De Leon I  
28 "proceed[ed] to examine . . . anew[]" the issue of whether



1 "registration of a judgment pursuant to 28 U.S.C § 1963  
2 create[s] a wholly new judgment that can, in turn, be re-  
3 registered to create wholly new judgments in other  
4 jurisdictions?" Id. at 1176; and at 1172. That examination  
5 provides equally compelling reasons why this court is guided by  
6 De Leon I and not Del Prado II, as Fidelity urges.

7 As "[c]ases such as *Stanford* and *Home Port Rentals* . . .  
8 wisely note," and the court further explained in De Leon I,  
9 section 1963's "statutory language does not compel the  
10 conclusion that a registered judgment is the equivalent of a  
11 domestic judgment for *all* purposes." Id. at 1175; and at 1176  
12 (emphasis in original). The De Leon I court provided several  
13 well-founded "reasons why it is logical to differentiate  
14 registered judgments and domestic judgments for purposes of  
15 determining which can, in turn, be registered elsewhere." Id.  
16 at 1176. "First, and perhaps most obviously," the De Leon I  
17 court expressed understandable concern that "a rule equating  
18 registered and domestic judgments for all purposes allows  
19 judgment creditors to avoid any application of statutes of  
20 limitation and repose applying to judgments." Id. "The  
21 practical effect" of such "serial registration . . . is that no  
22 judgment could ever expire, and that creditors could simply  
23 criss-cross the nation, registering and re-registering their  
24 judgments in perpetuity." Id.

25 The present case shows all too vividly how "serial  
26 registration" would conflict with Arizona's statute of  
27 limitations pertaining to actions on foreign judgments, thus  
28 "mak[ing] a mockery out" of that statute. See id. In Fidelity

1 V, this court held that "Fidelity permissibly re-registered  
2 [the] Arizona [registered] judgment under 28 U.S.C. § 1963 by  
3 filing a second Certification of Judgment in this court[.]"

4 Fidelity V, 855 F.Supp.2d at 973 (footnote omitted).

5 Significantly, however, this court also found that re-  
6 registration to be untimely under A.R.S. § 12-544(3)<sup>10</sup> because  
7 "Fidelity's [First] Arizona [Registered] [J]udgment became  
8 enforceable On December 3, 2002[,]. . . ten days after its  
9 entry[,]" but "Fidelity did not even attempt to 're-register'  
10 its judgment until April 5, 2007[.]" Id. at 978 and 979.

11 Consequently, allowing Fidelity to register the Washington  
12 Registered Judgment in this court, where its First Arizona  
13 Registered Judgment has been vacated because it was not timely  
14 "re-registered," would be allowing Fidelity to circumvent  
15 Arizona's statute of limitations - a result this court cannot  
16 condone.

17 Furthermore, allowing Fidelity to register the Washington  
18 Registered Judgment in Arizona under the facts of this case  
19 would "create the possibility of a cascading fountain of re-  
20 registered judgments[,]" which the De Leon I court warned  
21 against. See De Leon I, 742 F.Supp.2d at 1176. As that court  
22 rightly foresaw, "[w]hatever uncertainties and difficulties  
23 arise from allowing a judgment in one jurisdiction to be  
24 registered and enforced in another will be magnified --  
25 potentially exponentially -- when the registered judgment can,

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27 <sup>10</sup> Section 12-544(3) requires that an action "[u]pon a judgment  
28 . . . rendered without the state" be "commenced . . . within four years after  
the cause of action accrues [.]" A.R.S. § 12-544(3).

1 in turn, be re-registered and enforced elsewhere, independently  
2 of the original judgment." Id. The court went on to  
3 illustrate how that "complexity" would "be further compounded  
4 by the sale of certain judgments to different holders, all of  
5 whom may be seeking to collect against the assets of the  
6 judgment debtor." Id. (footnote omitted).

7 "Plaintiff's version of the rule," *i.e.*, allowing re-  
8 registered judgments to be re-registered and enforced  
9 elsewhere, independently of the original judgment[,]" would  
10 necessitate "a lengthy, imprecise, and potentially recursive  
11 untangling" of such judgments. Id. By way of example, the  
12 court hypothesized that "a Georgia-registered judgment in  
13 dispute" would have to be "traced back to a Vermont-registered  
14 judgment, which itself derived from a Virginia-registered  
15 judgment, which may be traceable to a *different* Georgia-  
16 registered judgment, etc." Id. (emphasis in original). Like  
17 the De Leon I court, this court also cannot condone such a "a  
18 web of interlocking and recursive registration, re-  
19 registration, and re-re-registrations[,]" id. at 1177,  
20 especially where, as here, the First Arizona Registered  
21 Judgment was not timely re-registered under Arizona law.

22 In contrast, one clear advantage of "a scheme in which  
23 only the original judgment can be registered, [is that] every  
24 re-registered judgment relates back to a single source by a  
25 single transaction." Id. This means that "[a] party or court  
26 having concerns about the validity of a registered judgment  
27 need only trace back the matter one level -- from the  
28 registration state to the original judgment." Id. (footnote

omitted). "Satisfaction or partial satisfaction of the registered judgment can be reflected by a notation on the original judgment, supplying notice of partial satisfaction to anyone reviewing the registration of that original judgment in another jurisdiction." Id. Thus, "a scheme that treats registered judgments and domestic judgments similarly for in-state enforcement purposes -- thus satisfying the statutory requirements of § 1963 -- but denies registered judgments the capability of being re-registered elsewhere[,] avoids "[t]he mischief of recursive registration and judgment creation[.]"<sup>11</sup> Id.

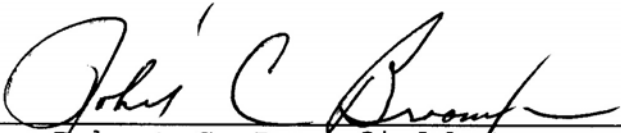
For all of these reasons, the court finds that Fidelity impermissibly filed the Washington Registered Judgment in this court pursuant to 28 U.S.C. § 1963. Accordingly, the court hereby **GRANTS** defendants' motion to "vacate the certification of judgment for registration in another district[]" Mot. (Doc. 9) at 1:16-17 filed in this court on July 7, 2011. The granting of this motion renders moot defendants' secondary argument that because the Washington Registered Judgment "is

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<sup>11</sup> The last issue addressed in De Leon I was plaintiff's suggestion that the revived Illinois judgment was equivalent to "a 'judgment on a judgment.'" De Leon I, 742 F.Supp.2d at 1177. Fidelity is not making a similar suggestion in this case. Hence, the court need not consider whether the Washington Registered Judgment is equivalent to a judgment on a judgment. The court observes, however, that the same reasons which prevented the De Leon I court from treating the Illinois judgment as a judgment on a judgment preclude treating the Washington Registered Judgment as a judgment on a judgment. More specifically, as in De Leon I, because the Washington Registered judgment "did not include a Summons, Certificate of Service, or any other indication" that at the time of registration Fidelity gave notice to defendants of that registration, this court could not find that such judgment was equivalent to the Washington court "having duly adjudicated an adversarial proceeding and issued a 'judgment on a judgment.'" See id. at 1178 (footnote omitted).

1 void for lack of due process and personal jurisdiction, it  
2 cannot be the basis for the registration of a new judgment in  
3 Arizona." See id. at 19:17-18.

4 DATED this 9th day of April, 2013.

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8 Robert C. Broomfield  
9 Senior United States District Judge  
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17 Copies to counsel of record  
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